



IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH
*(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(Through Web-Based Video Conferencing)*

IA No. 864/2024
In C.P. (IB) No. 71/BB/2023
U/s. 14 read with section 60 (5) of the
Insolvency and Bankruptcy Code, 2016
R/w Rule 11 of the NCLT Rules, 2016

In the matter of IA No. 864/2024:

Sindhu Cargo Services Private Limited

Represented by its Resolution Professional

Mr. Shirley Mathew

Having its registered office at Block 3, No.34, Nellakunte,

Near Mvit College Bettahalasuru, Hunse Maranahalli,

Bangalore, Karnataka- 562157

..... Applicant

Versus

Yes Bank Limited,

Brindavan Building, Raja Ram Mohan Roy Road,

Sampangi Rama Nagar, Bengaluru — 560025

.....Respondent

In the decided matter of:

Union Bank of India

Financial Creditor

Versus

Sindhu Cargo Services Private Limited

Corporate Debtor

Last date of hearing : 16.06.2025

Order Delivered on: 08/07/2025

Coram: 1. Hon'ble Shri Sunil Kumar Aggarwal, Member (Judicial)

2. Hon'ble Shri Radhakrishna Sreepada, Member (Technical),

Parties/Counsels Present:

For the Applicant: Ms. Maitreyi Bhat

For the Respondent: Shri Narayana Shenoy,



ORDER

1. This Application has been filed on 05.11.2024 under section 14 and section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 by Sh. Shirley Mathew, Resolution Professional of the Sindhu Cargo Services Private Limited (“Corporate Debtor”) inter-alia praying for following reliefs:-

A. Declaring that the following acts of the Respondent are in violation of the moratorium imposed under Section 14 of the Insolvency and Bankruptcy Code, 2016:

- i. *appropriation of a sum of Rs. 5,00,00,000/- (Rupees Five Crore) along with interest of Rs. 3,88,490/- (Rupees Three Lakh Eighty Eight Thousand Four Hundred and Ninety only) (i.e., interest after deduction of TDS); and*
- ii. *debit of a sum of Rs. 8,52,161/- (Rupees Eight Lakhs Fifty-two Thousand One Hundred Sixty-One only) towards interest on overdraft; and*
- iii. *holding back interest payable to the Corporate Debtor for the period 12.07.2024 and 30.09.2024 amounting to Rs. 6,90,000 (Rupees Six Lakh Ninety Thousand) by the Respondent Bank; and*

B. Consequently, directing the Respondent Bank to (i) reverse the appropriation of a sum of Rs. 5,03,88,490/- (Rupees Five Crore Three Lakh Eighty Eight Thousand Four Hundred and Ninety only), and (ii) reverse the debit of a sum of Rs. 8,52,161/- (Rupees Eight Lakhs Fifty Two Thousand One Hundred Sixty only) towards interest on overdraft and (iii) credit interest amounting to Rs.6,90,000 (Rupees Six Lakh Ninety Thousand), to the account of the Corporate Debtor in the interests of justice.

2. Brief facts of the application are given hereunder:
 - a. The Company Petition bearing C.P (IB) No.71/BB/2023 was filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by “Union Bank of India” to initiate Corporate Insolvency Resolution Process (‘CIRP’) against Corporate Debtor was admitted on 28.05.2024 and Shri Shirley Mathew was appointed as Interim Resolution Professional (“IRP”) of the Corporate Debtor.
 - b. After receiving the Order of appointment of the Applicant as the IRP of the Corporate Debtor, the IRP issued a Public Announcement in the newspapers in Form-A on 31.05.2024 as per Regulation 6 of the Insolvency Bankruptcy Board of India (Insolvency Resolution Process for



Corporate Persons) Regulations 2016 and the last date for submission of claims was 11.06.2024.

- c. The Applicant states that the Corporate Debtor maintained a current account bearing No. 002286700000128 and three fixed deposits with the Yes Bank Limited (“Respondent”) and the balance in the Corporate Debtor's current account as on 28.05.2024 was an overdraft of ₹4,58,76,881.86.
- d. It is submitted that despite the moratorium being in force from 28.05.2024, the Respondent undertook the following transactions which constitute direct violations of Section 14 of the Code:
 - i. On 12.07.2024 and 03.09.2024, the Respondent Bank appropriated a total sum of ₹5,00,00,000/- from the fixed deposits of the Corporate Debtor. Additionally, an interest amount of ₹3,88,490/- was also adjusted by the Bank. These amounts were credited to the Corporate Debtor's current account that was in overdraft, thereby reducing the outstanding liability of the Corporate Debtor towards the Bank. This unilateral adjustment by the Respondent was made without the approval of the IRP or the Committee of Creditors (CoC), and after the imposition of the moratorium.
 - ii. Further, the Respondent debited an aggregate amount of ₹8,52,161/- towards interest on the overdraft facility on multiple occasions, specifically on 30.06.2024, 31.07.2024, 31.08.2024, and 30.09.2024, in contravention of the moratorium. Additionally, the Respondent withheld crediting interest accrued on the Corporate Debtor's fixed deposits amounting to ₹6,90,000/- for the period between 12.07.2024 to 30.09.2024.
- e. The Applicant submits that the actions of the Respondent are in direct violation of Section 14 of the Insolvency and Bankruptcy Code, 2016, which explicitly prohibits any creditor from initiating or continuing recovery proceedings or appropriating assets of the Corporate Debtor after



the commencement of CIRP. It is further contended that the Respondent should have submitted its claim before the IRP in accordance with the provisions of the Code, instead of unilaterally adjusting its dues from the Corporate Debtor's account.

- f. The Applicant places reliance on the judgment of the Hon'ble National Company Law Appellate Tribunal in ***Bank of India and Ors. vs. Bhuban Madan, Resolution Professional of Ferroy Alloys Corporation Limited***, wherein it was held that a Financial Creditor cannot debit amounts from the Corporate Debtor's account or enforce any recovery action during the moratorium period. It was emphasized that such actions during the CIRP amount to unjust enrichment and violate the principle of equitable treatment of creditors.
 - g. It is further submitted that the amounts appropriated by the Respondent Bank on 12.07.2024 and 03.09.2024 were done in violation of the moratorium imposed on 28.05.2024. The amounts appropriated were towards satisfaction of the debt owed by the Corporate Debtor to the Respondent and this is prohibited by Section 14 Code. Further, the amounts appropriated by the Respondent Bank on 30.06.2024, 31.07.2024, 31.08.2024, and 30.09.2024 towards interest on the Overdraft were also done in violation of the moratorium imposed on 28.05.2024. These transactions do not fall within the exceptions under Section 14 of the Code. Such transactions amount to a recovery action by the Respondent after imposition of moratorium and has resulted in unjust enrichment of the Respondent and amount to preferential transactions.
 - h. In view of the facts and legal position, the Applicant prays for direction to the Respondent to bring back and reverse the said amounts to the account No. 50200101071986 of the Corporate Debtor maintained at YES Bank Limited.
3. On 13.03.2025, the Respondent has filed its statement of objections and contended as under:



- a. The appropriation of money amounting to a total sum of ₹5,00,00,000/- from the fixed deposits of the Corporate Debtor was not in violation of Section 14 as the Fixed Deposit and Overdraft- facility was a pre-CIRP arrangement, backed by Application dated 12.01.2022 by the Corporate Debtor and the Board Resolution dated 10.12.2021 of the Corporate Debtor authorizing the Fixed Deposit and Overdraft facility. Further, the set-off is transactional set-off or equitable set-off which is permissible during the CIRP as is held by the Hon'ble Supreme Court in *Bharti Airtel Ltd. vs Vijayakumar V Iyer and Ors* and the respondent has not violated any provisions and/or regulations under the IBC. The corporate debtor of its own choice has availed the Overdraft of Rs.4,50,00,000/- against fixed deposit of Rs.5,00,00,000/-, which apparently is one transaction by its nature. There is neither loan nor a security in its ordinary sense. Interest accrued on the said FD has been set-off and adjusted.
- b. The Applicant has relied on a decision of the Hon'ble NCLAT in the case of *Bank of India & Ors. V. Bhubhan Madan, Resolution Professional for Ferroy Alloys Corporation Ltd* but the facts of said case were different and not applicable to the instant case. The Respondent was only making adjustments of the amounts lying with them to the amounts payable by the Corporate Debtor, which are prevalently known as 'margin money transactions', which is permissible under law. In this respect the Respondent has place reliance on the decision of the Hon'ble NCLAT in *Punjab National Bank v. Supriyo Kumar Chaudhari*, Resolution Professional for *JVL Agro Industries Ltd.*, which was upheld by the Hon'ble Supreme Court wherein it has been held that margin money (FDs) were not assets available to the Corporate Debtor but were charged in favour of the Respondent for the FDOD facility, and therefore excluded from the CIRP asset pool.



- c. In the circumstances, the respondent bank has not violated any provisions and/or regulations under the IBC as alleged or otherwise. In the instant case the corporate debtor of its own choice had availed FDOD of Rs.4,50,00,000/- against fixed deposits of Rs.5,00,00,000/-, which apparently is one transaction by its nature. There is neither loan nor a security in its ordinary sense. Interest accrued on the said FD has been set-off and adjusted.
4. On 06.05.2025, the Applicant has filed its Rejoinder and stated as under:
- a. It is uncontested that the Respondent debited corporate deposits post commencement of CIRP. The Respondent's admission confirms the withdrawal of ₹5,00,00,000/- plus interest from Corporate Debtor's account. Further, the Respondent's claim that the amounts debited represent "margin money" and thus not part of CIRP assets is unsubstantiated as no documentation evidencing trust/escrow, earmarking, or segregation of funds has been provided for canvassing the same.
- b. **Fixed Deposits held in corporate name-** The FDs were not designated margin deposits but general assets in the corporate account—hence included in CIRP estate upon moratorium.
- c. **No trust or earmark created-** Unlike *Supriyo Chaudhuri* or *IOB v. Arvind Kumar*, there is no bank guarantee or trust declaration—thereby failing to qualify for exclusion under Section 14 moratorium. Moreover the coordinate bench of NCLT Delhi in *Phoenix ARC v. Anush Finleash & Construction Pvt. Ltd., (2021) ibclaw.in 96 NCLT* has held that Assets not held in trust qualify for CIRP estate.
- d. **Moratorium Violation under Section 14-** The Applicant contends that Respondent's unilateral debit post-CIRP is an act of "enforcement of security interest" forbidden by Section 14(1)(c), and constitutes a clear wrongful violation.



- e. **Inapplicability of Equitable Set-Off Doctrine-** The Applicant submits that Equitable set-off presupposes mutuality of debt and contractual agreement—both of which are lacking. FDOD was an overdraft facility, not a mutual transactional debt directly linked to FDs.
5. We have carefully considered the submissions made in the application by the Resolution Professional and have also perused the materials on record.
6. The relevant provisions of Section 14 (1) of the Code read as follows:
- “14. Moratorium..-**
- 1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -*
- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*
 - (b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
 - (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*
 - (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor. '[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period.]'*
7. It is not in dispute that the Corporate Debtor had availed overdraft of Rs. 4,50,000 against the fixed deposits lying with the respondent, vide application dated 12/01/2022 before commencement of the CIRP against the Corporate Debtor and the Corporate Debtor vide board resolution dated 10/12/2021 took the approval of its then board of directors to avail the overdraft facility of Rs.4,50,00,000 (Rupees four crores fifty lakhs only) against the Fixed Deposit



of Rs.5,00,00,000. It is a fact that such transaction between the respondent Bank and its customer was contractual in nature rather than personal dealing.

8. The Applicant has submitted that the Respondent has violated the provisions of section 14 of the Code by unilaterally adjusting the fixed deposit in violation of provisions of the moratorium under the Code whereas the Respondent has contended that it had not violated the provisions of moratorium under the Code as the transactional set-off or equitable set-off is permissible during the CIRP as is held by the Hon'ble Supreme Court in ***Bharti Airtel Ltd. vs Vijayakumar V Iyer and Ors, (2024) ibclaw.in 02 SC.***
9. The Relevant portion of the Judgement in ***Bharti Airtel Ltd. v. Vijaykumar V. Iyer (2024) ibclaw.in 02 SC*** is reproduced below

30. Given the aforesaid legal position, we do not think that the provisions of statutory set-off in terms of Order VIII Rule 6 of CPC or insolvency set-off as permitted by Regulation 29 of the Liquidation Regulations can be applied to the Corporate Insolvency Resolution Process. The aforesaid rule would be, however, subject to two exceptions or situations. The first, if at all it can be called an exception, is where a party is entitled to contractual set-off, on the date which is effective before or on the date the Corporate Insolvency Resolution Process is put into motion or commences. The reason is simple. The Corporate Insolvency Resolution Process does not preclude application of contractual set-off. During the moratorium period with initiation of the Corporate Insolvency Resolution Process, recovery, legal proceedings etc. cannot be initiated, enforced or remain in abeyance. Besides the moratorium effect, the terms of the contract remain binding and are not altered or modified.

31. The foundation of contractual set-off is based on the same ground as in the case of equitable set-off, which is impeachment of title, albeit contractual set-off is a result of mutual agreement that permits set-off and adjustment. Therefore, if a debtor's title to sue is impeached before the Corporate Insolvency Resolution Process is set into motion, so should the title of the Resolution Professional, who in terms of Section 25 of the IBC has the duty to preserve and protect assets of the corporate debtor, including continuing the business operations of the corporate debtor. The Resolution Professional takes the debtor's property subject to all clogs and fetters affecting it in the hands of the debtor.

32. The second exception will be in the case of 'equitable set-off' when the claim and counter claim in the form of set-off are linked and connected on account of one or more transactions that can be treated as one. The set-off should be genuine and clearly established on facts and in law, so as to make it inequitable and unfair that the debtor be asked to pay money, without adjustment sought that is fully justified and legal. The amount to be adjusted should be a quantifiable and unquestionable monetary claim, as the Corporate Insolvency Resolution Process is a time-bound summary procedure. It is not a civil suit where disputed questions of law and facts are adjudicated after recording evidence. Set-off of this nature does not require



legal proceedings. Further, set-off of money is to be given against money alone. It will not apply to assets. Lastly, being an equitable right, it can be denied when grant of relief will defeat equity and justice.

33. We would in fact borrow the term 'transactional set-off' instead of equitable set-off, when we describe the second exception. The Derham and Gerard McCormack, Set-off under the European Insolvency Regulation (and English Law), 29 IIR 100, 100-117 (2020) 02 SC reason is that the second exception refers to an ascertained amount, which is a requirement for legal set-off under Order VIII Rule 6 of CPC and at the same time relies on equitable right when the statute is silent and there is no reason to deny set-off under the common law. It is an equitable right because the transactions are close and connected, harbingering the claim and the counterclaim. It would be manifestly unjust to bifurcate the connected transactions to accept and enforce the claim of one party without adjusting the amount due to the second party. This, in our opinion, does not contradict the eclipse by way of moratorium, because the transactions are treated as singular and one. When transactions are closely connected, a claim for transactional set-off during the moratorium period on a claim by the Resolution Professional, is by way of a defence to protect the legitimate expectation and respect legal certainty.

34. Thus, while accepting contractual and transactional set-off on the conditions specified, we have struck a balance with the doctrines of pari passu and anti-deprivation, which we believe is just and fair. Insolvency set-off in terms of Regulation 29 of the Liquidation Regulations is statutory

10. The above legal proposition that where there exists a clear contractual right to set-off, when a party is eligible for the contractual set-off, on the date which is effective prior or on the date that the CIRP proceedings begin, such actions do not violate Section 14 of the Code, squarely applies to the facts in hand as the adjustments pertain to a pre-CIRP transaction between the Corporate Debtor and Respondent which is in nature of a transactional set-off and therefore not prohibited.
11. The Applicant has disputed the assertion of the Respondent that the overdraft availed by the Corporate Debtor against the Fixed Deposit is in form of Margin Money by placing reliance on **Phoenix ARC** and **Bhubhan Madan** but there is no need to examine such question in this case.
12. Thus setting off the overdraft balance, of course with accrued interest, by the respondent Bank with the fixed deposits of Corporate Debtor as per untainted pre-CIRP contract did not violate the moratorium conditions nor the fixed deposits with interest formed part of asset pool of Corporate Debtor. There is,



therefore no cause for interference with the respondent Bank's action under the Code.

13. Accordingly, the Interlocutory Application No. 864/BB/2024 is dismissed.

-Sd/-

(RADHAKRISHNA SREEPADA)
MEMBER (TECHNICAL)

-Sd/-

(SUNIL KUMAR AGGARWAL)
MEMBER (JUDICIAL)